

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Forest Electric Corporation	)	File No. EB-03-NY-128
WPWD334	)	NAL/Acct. No.: 200432380003
Edison, New Jersey	)	FRN 0007-3992-31

**FORFEITURE ORDER**

**Adopted: October 25, 2004**

**Released: October 27, 2004**

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Forest Electric Corporation (“Forest”) for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves operation of a repeater station on the unauthorized frequency of 473.175 MHz.

2. On December 29, 2003, the District Director of the Commission’s New York Field Office (“New York Office”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Forest in the amount of four thousand dollars (\$4,000). Forest filed a response on January 29, 2004 (“*Response*”).

**II. BACKGROUND**

3. Beginning in May 2003, Commission agents observed continuous transmissions on the frequency of 473.175 MHz. The agents noted that the station using this frequency did not identify by a call sign or provide any station identification. A check of Commission records showed that this frequency was assigned to the Jersey City Police Department in Jersey City, New Jersey. On June 17, 2003, a Commission agent, using a mobile direction-finding vehicle monitored the frequency 473.175 MHz in Jersey City, and determined that the transmissions were coming from a fixed station at a Turner Construction Company (“Turner”) site on 30 Hudson Street in Jersey City. The agent spoke to Turner’s project superintendent concerning the unauthorized operation on a frequency that was assigned to a public safety entity, and was advised that the transmissions may be coming from a subcontractor using its own radio equipment.

4. On June 23, 2003, Commission agents using a mobile direction-finding vehicle again monitored the frequency 473.175 MHz in Jersey City, and determined that the transmissions were coming from an antenna located on a trailer operated by Forest at the construction site on Hudson Street. The

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<sup>1</sup>47 C.F.R. § 1.903(a).

agents conducted a station inspection with Forest's foreman, and observed the transmitter in use, a Vertex Standard (VXR-7000), which is rated at 50 Watts. The agents advised the construction foreman that Forest was operating a repeater station on an unauthorized frequency of 473.175 MHz. A review of Commission records indicated that Forest was granted authority under its license, WPWD334, to operate one repeater station on a frequency of 463.250 MHz, and 40 mobile units on a frequency of 468.250 MHz. Forest did not, however, have Commission authorization to operate a repeater station on 473.175 MHz.

5. On December 29, 2003, the District Director of the New York Office issued the subject *NAL* to Forest, finding that it willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 1.903(a) of the Rules. In its response, Forest admits that it violated Section 1.903(a), but requests a reduction of the proposed forfeiture on the grounds that: 1) it immediately ceased operation on the unauthorized frequency upon notification by Commission agents on June 23, 2003; 2) its site personnel did not intend to violate the Rules; and 3) Forest did not authorize its personnel to operate on frequency 473.175 MHz.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Forest's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

7. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services be used and operated with a valid authorization granted by the Commission. Two FCC inspections of the trailer operated by Forest at the construction site on Hudson Street revealed that Forest was operating a repeater station on an unauthorized frequency of 473.175 MHz. A review of Commission records indicated that Forest did not have Commission authorization to operate a repeater station on that frequency. In its response, Forest does not challenge the findings of the *NAL* that it willfully and

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup>As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 n.56 (2003).

<sup>4</sup>47 U.S.C. § 503(b).

<sup>5</sup>47 C.F.R. § 1.80.

<sup>6</sup>47 U.S.C. § 503(b)(2)(D).

repeatedly violated Section 1.903(a) of the Rules.

8. Forest seeks a reduction in the amount of the proposed forfeiture for several reasons. First, Forest asserts that it immediately ceased operation on the unauthorized frequency after the June 23, 2003 Commission inspection. Although Forest's action is commendable, remedial actions taken *after* the Commission's inspection, notice or action have not been considered a mitigating factor warranting a reduction of the assessed forfeiture.<sup>7</sup>

9. Forest also asserts that its forfeiture should be reduced because it did not authorize its personnel to operate on the frequency of 473.175 MHz. It is well-established, however, that Forest is accountable for its employees' and independent contractors' acts and omissions, and ultimately, is responsible for compliance with the Commission's requirements.<sup>8</sup> Nor do we find merit in Forest's request for a reduction on the grounds that its personnel did not intend to violate the Commission's Rules. The Commission has not considered an absence of intent to violate the rules as a mitigating factor warranting a forfeiture reduction.<sup>9</sup> We do, however, find that Forest has a history of overall compliance and, accordingly, reduce the forfeiture amount from four thousand dollars (\$4,000) to three thousand two hundred dollars (\$3,200) on that basis.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Forest Electric Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willfully and repeatedly violating Section 1.903(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be

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<sup>7</sup>See *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, ¶ 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, ¶ 13 (Enf. Bur. 2002). *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21864-65, ¶¶ 7-8 (2002).

<sup>8</sup>See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978).

<sup>9</sup>See, e.g., *4M of Richmond, Inc., Licensee of WLEE 4M Communications, Inc.*, DA 04-2515 ¶ 13 (Enf. Bur., released August 13, 2004).

<sup>10</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>11</sup>47 U.S.C. § 504(a).

sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Mr. Robert A. Rynar, Vice President-Operations, Forest Electric Corporation, 160 Raritan Center Parkway, Suite 18, Edison, New Jersey 08837.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>12</sup>See 47 C.F.R. § 1.1914.